

NATIONAL PORTRAIT GALLERY

PROCEDURES FOR DEALING WITH PUBLIC INTEREST DISCLOSURES

I, Angus Trumble, Director of the National Portrait Gallery of Australia (NPG), establish these Procedures under section 59 of the [Public Interest Disclosure Act 2013](#) (the PID Act). These Procedures came into effect on 15 January 2014.



Angus Trumble
10 February 2014

1. NPG's commitment

- 1.1. The PID Act prescribes a framework for the disclosure and investigation of wrongdoing and maladministration in the Australian public sector (APS). The NPG encourages and supports the reporting of wrongdoings in the APS so that they can be investigated and addressed.
- 1.2. It is important that allegations of disclosable conduct are brought to the attention of NPG and then investigated in a fair and timely manner. NPG promotes integrity and accountability in the APS by encouraging disclosure of suspected wrongdoing in accordance with these Procedures. NPG aims to protect people who make disclosures in accordance with the PID Act.

2. What is a public interest disclosure?

- 2.1. A public interest disclosure generally occurs when:
 - ▣ a current or former public official (*the discloser*)
 - ▣ discloses to their supervisor or manager, or an authorised officer
 - ▣ information which tends to show, or the discloser believes on reasonable grounds tends to show, one or more instances of disclosable conduct.
- 2.2. In limited circumstances a public official may disclose such information to a person outside government. For more information please refer to the [Agency Guide to the PID Act 2013 published by the Commonwealth Ombudsman](#).

3. Application of these Procedures

- 3.1. These Procedures apply to disclosures made to NPG authorised officers as internal disclosures, or those disclosures which are subsequently allocated to the NPG.
- 3.2. These Procedures do not apply to external disclosures, emergency disclosures or legal practitioner disclosures, unless subsequently allocated to the NPG. For more

information on these types of disclosures please refer to the Agency Guide to the PID Act.

3.3. These Procedures must be applied and interpreted in a manner that is not inconsistent with the PID Act, the Rules, Ombudsman's Guides and Standards. All terms that are used in these Procedures are taken to have the same meaning as in the PID Act.

3.4. A failure to apply these Procedures to their full extent will not result in an allocation, investigation or decision being invalid.

4. Who can make a public interest disclosure?

4.1. A person (*a discloser*) who is a current or former 'public official' may make a public interest disclosure (*a disclosure*). A public official includes:

- an APS employees (either current or former employees);
- a statutory office holder;
- another person who exercises power under a Commonwealth Law; or
- people or bodies providing services under a contract to the Commonwealth, including subcontractors.

4.2. An authorised officer can deem a person to be a public official to facilitate the making of a public interest disclosure.

4.3. If a person who intends to make a disclosure was not a public official at the time they obtained the information they intend to disclose, they may be deemed to be a public official by an authorised officer who believes on reasonable grounds that the person has information that concerns disclosable conduct.

4.4. The authorised officer can determine a person to be a public official on the person's request or on their own initiative. If it is in response to a person's request, the authorised officer must either make the determination, or refuse to make the determination and advise the person of the reasons.

4.5. To make the determination, the authorised officer must issue a written notice to the person stating that the PID Act has effect, and is taken always to have had effect, in relation to the disclosure of the information as if the individual had been a public official when they obtained the information.

5. Who can receive a public interest disclosure?

5.1. A public interest disclosure, internally within the NPG, can be made to:

- the Director of the Gallery;
- a discloser's current supervisor or manager; or
- an authorised officer.

5.2. In certain circumstances, a disclosure may be made to an external body such as the Ombudsman. For more information please refer to Agency Guide to the PID Act.

5.3. To gain the protections the PID Act provides to disclosers, a public official must make a disclosure to an appropriate person.

6. How can a disclosure be made?

- 6.1. You can contact a person who is authorised to receive and deal with a public interest disclosure (authorised officers) by email at PID@npg.gov.au
- 6.2. A disclosure may be made to an authorised officer either directly, or through the person's supervisor or manager. These disclosures may be made orally or in writing, and may be made anonymously and do not have to state that the disclosure is being made under the PID Act.
- 6.3. Anonymous disclosures will be acted upon wherever possible. However, one of the requirements for making a public interest disclosure is that the person is or was a public official. This does not mean that the person has to prove their status. The discloser may give information that supports that status, for example, by explaining how they know about the wrongdoing they are reporting. If they do not, the authorised officer may wish to ask questions along these lines (if the person has provided contact details).
- 6.4. There are reasons why disclosers should consider identifying themselves to an authorised officer, or at the very least providing a means of contact:
 - the PID Act requires the NPG to keep a discloser's identity confidential, subject to limited exceptions including the discloser's consent. The person's identity may nonetheless become apparent if an investigation is commenced;
 - it will be difficult to ensure protection from reprisal if the Gallery does not know the discloser's identity;
 - the authorised officer who receives an anonymous report must have reasonable grounds to suspect the disclosable conduct has occurred in order to allocate the matter for investigation. If they cannot contact the discloser to seek necessary further information, the matter may not proceed;
 - it will be difficult to conduct an investigation if the discloser cannot be contacted for further information. An investigator has the discretion not to investigate, or investigate further, if the discloser does not provide their name and contact details or is unable to give the investigator further information or assistance if needed; and
 - a discloser who does not provide a means of contact cannot be updated on the progress of the matter, including the outcome of the investigation.
- 6.5. A person who has made an anonymous public interest disclosure may come forward at a later stage to disclose their identity and seek the protections of the PID Act.

7. Confidentiality

- 7.1. Generally the identity of disclosers is protected and remains confidential. Identification of disclosers will only occur in accordance with the PID Act or with the consent of the discloser. It is a criminal offence for a public official who is involved in handling a disclosure to reveal the discloser's identifying information to anyone else without their consent or use it for another purpose, unless it is for the purposes of the PID Act, an investigation by the Ombudsman, or another Commonwealth law or prescribed law, or if the information has already lawfully been published.

7.2. When the disclosure is received the authorised officer must conduct a risk assessment that considers if the identity of the discloser is readily ascertainable or is likely to become ascertainable during the conduct of an investigation. If the disclosure is first made to a supervisor or manager and the person wishes their identity to remain anonymous, the supervisor or manager should conduct a risk assessment.

7.3. For more information please refer to the Agency Guide to the PID Act.

8. Protecting disclosers from reprisal

8.1. A discloser is subject to protection from reprisal under the PID Act where they make a disclosure, unless such a disclosure does not fall within the PID Act or these Procedures do not apply. Those protections include confidentiality and immunity from criminal and civil liability or disciplinary action.

8.2. However, making a disclosure under the PID Act does not protect a discloser from his or her wrongdoing, including where the discloser is involved in the wrongdoing. A person who intentionally makes a false or misleading disclosure will not receive protections under the PID Act.

8.3. When the disclosure is received the authorised officer must conduct a risk assessment that considers the risk of reprisal action being taken against the discloser. If the disclosure is first made to a manager or supervisor and the person wishes their identity to remain anonymous, the manager or supervisor should conduct a risk assessment.

8.4. When conducting a risk assessment, wherever possible, the discloser should be asked why they are reporting wrongdoing and who they might fear a reprisal from.

8.5. For more information please refer to the Agency Guide to the PID Act.

9. What conduct can be disclosed?

9.1. A public official can disclose information that they believe on reasonable grounds to be disclosable conduct.

9.2. In general this means conduct by an agency, a public official or a Commonwealth contractor (in connection with the contract) that:

- contravenes a Commonwealth, State or Territory law;
- in a foreign country, contravenes a foreign law that applies to the agency, official or service provider;
- perverts the course of justice;
- is corrupt;
- constitutes maladministration, including conduct that is based on improper motives or is unreasonable, unjust, oppressive or negligent;
- is an abuse of public trust;
- involves fabrication, falsification, plagiarism or deception relating to scientific research, or other misconduct in relation to scientific research, analysis or advice;
- results in wastage of public money or public property;
- unreasonably endangers health and safety;
- endangers the environment; or
- is prescribed by the PID rules.

9.3. Individual grievances or workplace conflicts should be dealt with through other existing mechanisms such as the inappropriate behaviour policy rather than being the subject of an investigation under the PID Act. However, if it appears to the authorised officer that such a disclosure may represent a systemic issue within the Gallery then it may be treated as a disclosure under the PID Act.

9.4. Not all conduct is disclosable, for more information please refer to the Agency Guide to the PID Act.

10. Authorised officer to deal with a disclosure

10.1. At the time a disclosure is made to an authorised officer, the discloser will be advised by the authorised officer of the following matters:

- that the disclosure could be treated as an internal disclosure for the purposes of the PID Act, including outlining all requirements in order to be considered an internal disclosure under the PID Act; and
- explain the protections provided by the PID Act to persons who make disclosures under the PID Act; and
- advise the discloser of any orders or directions of which the authorised officer is aware that are designated publication restrictions that may affect disclosure of the information.

10.2. The authorised officer is required to make an appropriate record, including the time and date of the disclosure and include the information that is advised to the discloser under paragraph 10.1 of these Procedures. All practicable steps should be taken for this record to be signed by the discloser as being correct.

10.3. A copy of all records, file notes or information provided as part of the disclosure must be retained on the official file, as per paragraph 17 of these Procedures.

10.4. The authorised officer is not the officer who investigates the disclosure. The investigator is the Gallery Director (or delegate) if the disclosure is allocated to the NPG for investigation.

11. Allocation of a disclosure

11.1. An authorised officer must consider the disclosure and determine if they require further information prior to deciding if the disclosure is a public interest disclosure that should be allocated. An allegation alone with no supporting information is insufficient to make a decision and the discloser should be asked for additional information.

11.2. The authorised officer should ask the discloser if they wish the disclosure to be investigated, prior to making an allocation decision. However, the discloser's view will not be the substantive factor taken into consideration when making a decision whether or not to allocate a disclosure for investigation. If the discloser does not respond within 7 calendar days, the discloser is deemed to wish the disclosure to be investigated.

11.3. The authorised officer must, where practicable, ask the discloser whether they consent to the authorised officer giving the discloser's name and contact details to the Gallery Director for allocation and investigation. If the discloser does not

respond within 7 calendar days, the discloser is deemed not to consent to their name and contact details being provided to the gallery Director.

- 11.4. The authorised officer must make a written record of any information or responses received if they seek further information from the discloser prior to allocation.
- 11.5. The authorised officer must decide if they are satisfied, on reasonable grounds, that the disclosure is a public interest disclosure within the meaning of the PID Act. If the authorised officer decides the disclosure is a public interest disclosure within the meaning of the PID Act, the disclosure must be allocated for investigation.
- 11.6. A disclosure may be allocated to one or more agencies for handling (including the NPG, the Ombudsman or another agency). The authorised officer can only allocate a public interest disclosure to another agency if an authorised officer in that agency consents to the allocation.
- 11.7. Once a decision is made regarding allocation, the authorised officer is required to send information regarding the disclosure, and the allocation decision, to:
 - the Gallery Director, or their nominated delegate; and
 - the Ombudsman's office.This information can only include the name and contacts of the discloser if he or she consents.
- 11.8. The authorised officer is required to notify the discloser of their allocation decision, and reasons for their decision, in accordance with paragraph 15 of these Procedures.

12. Investigation of a disclosure

- 12.1. Once a disclosure has been allocated to the Gallery Director, he/she must investigate the disclosure unless the discretion in paragraph 13 of these Procedures is exercised.
- 12.2. The Gallery Director may investigate the disclosure in the manner that he/she deems fit in the circumstances, provided it is not inconsistent with these Procedures or the PID Act.

13. Decision not to investigate or discontinue investigation

- 13.1. The Gallery Director may decide not to conduct an investigation, or decide not to investigate further, into a disclosure if:
 - the disclosure is not in regards to a public official; or
 - the information provided as the disclosure does not concern serious conduct; or
 - the disclosure is considered vexatious, frivolous, misconceived or lacking in substance; or
 - the disclosure has been substantially dealt with, in that the matter is the same or substantially the same as a matter already investigated or being investigated; or
 - where it is impracticable to investigate; or
 - where the matter is to be investigated, other than in accordance with these Procedures.

- 13.2. If the Gallery Director decides not to investigate or discontinue the investigation, the discloser will be notified in accordance with paragraph 15 of these Procedures.
- 13.3. The Gallery Director must document the reasons for their decision to decline or discontinue the investigation, and this must be provided, if practicable, as part of the notification to the discloser.
- 13.4. The Gallery Director must inform the Ombudsman of any decision not to conduct an investigation or to discontinue an investigation, including the reasons for that decision.

14. Procedural fairness

- 14.1. The rules of procedural fairness apply to the conduct of an investigation and in particular to protect the interests of a person against whom an allegation has been made. However, if a disclosure is not investigated or discontinued, the Gallery Director does not have to provide procedural fairness to the person against whom allegations have been made.

15. Notification to persons making disclosures

- 15.1. The authorised officer must notify a discloser, if applicable and reasonably practicable in the circumstances, of their decision in relation to the allocation of the disclosure.
- 15.2. If allocated for investigation, the Gallery Director must notify the discloser, if applicable and reasonably practicable in the circumstances, of their decision:
 - to investigate the disclosure, either in accordance with these Procedures or under a separate investigative power;
 - not to investigate the disclosure; or
 - not to investigate the disclosure further.
- 15.3. If investigated, the Gallery Director must notify the discloser of the outcome of the investigation, including a copy of the report, insofar as the release of the report would not contravene designated publication restrictions as defined in section 8 of the PID Act.
- 15.4. When providing notification, in accordance with paragraphs 15.1 and 15.2 of the Procedures, the discloser must be provided with reasons for the decision and any review or appeal rights which flow from that decision.
- 15.5. A copy of all materials provided under paragraph 15.1 and 15.2 must be retained, as per paragraph 17 of these Procedures.
- 15.6. If contact details are not provided by the discloser, notifications to be provided under paragraph 15.1, will be deemed not practicable in the circumstances.

16. Timeframes for dealing with a disclosure

- 16.1. If a discloser makes a disclosure to their supervisor or manager, the supervisor or manager must inform the authorised officer as soon as possible.

- 16.2. An authorised officer is generally required, within 14 days of receiving the disclosure, to decide on the allocation of the disclosure.
- 16.3. Any investigation must be completed, and the report of the investigation finalised, within 90 days after the relevant disclosure was allocated.
- 16.4. The timeframe for investigation may be extended in accordance with the PID Act.

17. Record keeping

- 17.1. All documentation collected, including all information provided as part of the initial disclosure and copies of all notifications, must be retained on an official file by the authorised officer or appropriate delegate until the matter is completed. *The Archives Act 1983* and *Privacy Act 1988* apply to all documents created as part of this Procedure.

18. Investigation complete

- 18.1. This Procedure is considered complete once the discloser is provided either with:
 - notification that the matter has not been allocated as an internal disclosure to the NPG; or
 - notification, including the statement of reasons, that no investigation or further investigation will occur; or
 - a copy of the report into the investigation.